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10/039,303	01/02/2002	Charles F. Butler	Butler *6	6805
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James D. Hall Botkin & Hall, LLP Suite 400 105 East Jefferson Blvd. South Bend, IN 46601			RICHMAN, GLENN E	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES F. BUTLER

Appeal 2009-009938
Application 10/039,303
Technology Center 3700

Before JOHN C. KERINS, STEVEN D.A. McCARTHY and MICHAEL W. O'NEILL, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Charles F. Butler (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-8, the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellant's invention is directed to a method of providing vibrations to the body of a human or animal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of providing vibrations to the body of a human or an animal comprising the steps:
 - A. Providing a wave generation device associated with a minimum of one transducer;
 - B. Locating said transducer next to said body;
 - C. Actuating said wave generation device to cause said transducer to provide a signal producing a vibration in said body; and
 - D. Varying the frequency of said signal by scanning to move the location of said vibration from one part to another part of said body by said minimum of said one transducer.

THE REJECTIONS

The Examiner has rejected:

- (i) claims 1-3 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by Murtonen (US 5,113,852, issued May 19, 1992);

(ii) claims 1-3 and 5-7 under 35 U.S.C. § 102(b) as anticipated by Skille (US 5,101,810, issued April 7, 1992);

(iii) claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Murtonen; and

(iv) claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Murtonen in view of Skille.

The Examiner withdrew, on appeal, a rejection of claims 1-8 under 35 U.S.C. § 112, second paragraph. (Ans. 3).

ISSUE

Has the Examiner erred in finding that either Murtonen or Skille discloses a method in which a vibration signal frequency is varied in order to move the location of the vibratory effect from one part to another part of the body?

ANALYSIS

Claims 1-3 and 6-8--Anticipation--Murtonen

The Examiner finds that the disclosure at column 4, lines 18-22 and 35-45, teaches that the frequency range and amplitude of the vibratory signals can be adjusted. (Final Rejection 2-3). The Examiner maintains that this disclosure “read[s] on the step of varying the frequency of the signal by scanning to move the location of the vibration from one part to another part of the body.” (Final Rejection 3).

Appellant contends that, in Murtonen, some variation in frequency is employed in order to match the frequency to the particular muscle or body part to be treated, but that movement of the vibrational effect from one body

part to another via an individual transducer was not contemplated. (Appeal Br. 5). This argument comports with the disclosure in Murtonen that the vibration frequency of each vibrating element “can be varied within a certain range, so that each part of the body will receive vibration of a frequency corresponding to its own resonant frequency.” (Murtonen, col. 2, ll. 29-33). Murtonen appears to use phase differences between the pulses from a plurality of vibrating elements to cause a wavelike movement of sensations to overcome the problem of the numbing of body parts when subjected to continuous vibration of either constant or varying frequency. (Murtonen, col. 1, ll. 54-59; col. 2, ll. 33-43).

The Examiner has not established that the varying of frequency contemplated and disclosed by Murtonen, will result in a moving of the location of the vibratory effect from one part of the body to another. The rejection of claim 1, and that of claims 2, 3 and 6-8, as anticipated by Murtonen will not be sustained.

Claims 1-3 and 5-7--Anticipation--Skille

The Examiner relies on the disclosure in Skille found at column 5, line 66, to column 6, line 2, as disclosing the varying the frequency of a vibratory signal during a treatment session. (Final Rejection 3). The Examiner maintains, based on this disclosure, that “Skille’s device would be able to perform the step of varying the frequency of the signal by scanning.” (*Id.*).

As was the case with the Murtonen rejection, Appellant contends that Skille uses discrete frequencies to stimulate individual parts of the body. (Appeal Br. 8-9). The Examiner has made no finding that the varying of the frequency in the cited portion of Skille would result in a movement of the

location of the vibratory effect from one body part to another, and we fail to discern any part of Skille that would amount to such a disclosure.

The rejection of claim 1, and that of claims 2, 3 and 5-7 depending therefrom, as anticipated by Skille, will not be sustained.

Claim 4-Obviousness--Murtonen

The rejection of claim 4, though grounded in obviousness, relies on the same inadequate finding, made in rejecting claim 1, that the varying of frequency contemplated and disclosed by Murtonen will result in a moving of the location of the vibratory effect from one part of the body to another. The rejection will not be sustained.

Claim 5--Obviousness--Murtonen/Skille

The rejection of claim 4, also grounded in obviousness, relies on the same inadequate finding, made in rejecting claim 1, that the varying of frequency contemplated and disclosed by Murtonen will result in a moving of the location of the vibratory effect from one part of the body to another. The rejection will not be sustained.

CONCLUSION

The Examiner erred in finding that Murtonen and Skille each disclose a method in which a vibration signal frequency is varied in order to move the location of the vibratory effect from one part to another part of the body.

DECISION

The decision of the Examiner to reject claims 1-8 is reversed.

REVERSED

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Application 10/039,303

mls

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